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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

IN RE:

ARTHUR GRANT,

Attorney-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTION PRESENTED FOR REVIEW

1. Whether the denial of a continuance and subsequent deprivation of the assistance of counsel in an attorney disciplinary hearing deprives an attorney of due process of law.

2. Whether the practice of the Illinois Supreme Court in no considering technical objections to the procedures of the disciplinary agencies deprives attorneys of due process of law.

3. Whether the imposition of inconsistent sanctions by the Illinois Supreme Court in attorney disciplinary proceedings denies attorneys due process of law.

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IN THE
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October Term, 1982

IN RE:

ARTHUR GRANT,

Attorney-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

CITATION TO THE OPINION OF THE COURT BELOW

The opinion of the Illinois Supreme Court is reported at 89 Ill.2d 247, 433 N.E.2d 259 (1982). This is an original proceeding in the Illinois Supreme Court. It is included in the Appendix to this Petition.

JURISDICTION

The opinion of the Illinois Supreme Court reported at 89 Ill.2d 247, 433 N.E.2d 259 (1982) was entered on February 19, 1982. A timely petition for rehearing

was filed, and was denied on March 25, 1982.* This Petition for Writ of Certiorari was filed within ninety day of the denial of rehearing. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3) (1970).

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*On April 15, 1982, an order was entered to stay the mandate of the Illinois Supreme Court sixty days to and including June 12, 1982.

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person without its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Illinois Supreme Court suspended Arthur H. Grant, attorney-etitioner, from the practice of law for two years. In re Grant, 89 Ill.2d 247, 251, 433 N.E.2d 259, 261 (1982). The disciplinary proceeding against petitioner followed the procedures established by Illinois Supreme Court Rule 753. (Ill. Rev. Stat. 1975, ch. 110A, par. 753).

The Hearing Board of the Attorney Registration and Disciplinary Commission (the Commission) conducted two separate hearings

on charges of commingling and conversion of clients' funds. (Illinois Supreme Court Rule 753(c)). Following a hearing on the first complaint, during which petitioner was represented by counsel, the Hearing Panel recommended censure.

Petitioner was served with the second complaint on April 7, 1980 (Tr. p. 17) and appeared before the Panel on May 13, 1980. Petitioner orally requested a continuance so that he might be represented by counsel. Petitioner's counsel was present at another proceeding (Tr. 2). The Hearing Panel denied the motion for continuance and ruled that the allegations of the complaint be

deemed admitted because of petitioner's failure to answer. (Tr. 9, Commission Rule 7.1(1)).

Petitioner objected to the denial of continuance and raised the constitutional issue of denial of due process (Tr. 11-13). Petitioner stated that he was being denied a fair hearing because he was forced to proceed without the assistance of counsel. The Panel denied the motion for continuance pursuant to Rules 8.1 and 8.2 of the Commission (Tr. p. 12) requiring a written motion for continuance. Following this hearing on the second complaint, the Hearing

Panel found a conversion of clients' funds and recommended a three-year suspension.

The two complaints were consolidated and brought before the Review Board of the Commission (Illinois Supreme Court Rule 753(d)). The Review Board recommended suspension for three years and until further order of the Court. The petitioner filed Exceptions to the recommendation of the Review Board with the Illinois Supreme Court (No. 54243, Brief and Argument of Attorney-Respondent, Arthur H. Grant.)

The petitioner raised the due process issue with respect to the sufficiency of the evidence and inconsistent disciplinary sanctions in his brief. The Illinois Supreme Court briefly discussed the determination of the nature and extent of discipline and recommended a two-year suspension. In re Grant, 89 Ill.2d at 251, 433 N.E.2d at 261. The Court addressed the disparity of sanctions ranging from disbarment to censure for commingling and conversion "depending on the circumstances of the individual case." Id.

The dissenting opinion by Justice Moran, however, discusses the lack of consistency in the sanctions imposed:

> "In attorney disciplinary cases, this court has consistently reiterated the statement made in In re Andros (1976), 64 Ill.2d 419, 425-26, 1 Ill. Dec. 325, 256 N.E.2d 513: 'While a degree of uniformity in the application of attorney discipline is desirable, each case must still be determined on its merits.' Although this Court has held that the doctrine of 'stare decisis' cannot be applied to the specific discipline meted out in any particular case. (In re Nesselson (1966), 35 Ill.2d 454, 461, 220 N.E.2d 409, I fear that, too often, principles

> of uniformity are unduly minimized . . . . However, it is imperative that consistency by established to assure the imposition of like sanctions under similar circumstances." In re Grant, 89 Ill.2d at 252-53, 433 N.E.2d at 261 (Moran, J. dissenting).

The petitioner did not raise nor did the Illinois Supreme Court discuss the constitutional issue of denial of due process by the denial of the motion for continuance and right to assistance of counsel at thehearing panel. However, in Konigsberg v. State Bar of California, 353 U.S. 252 (1957), the United States Supreme Court reviewed a state court judgment even the constitutional

issue was not raised in the state court proceedings. Id. at 258. The petitioner in Konigsberg did not object to the proceedings for adminission to the bar on constitutional grounds at the hearing as did the petitioner herein. It is important for the supervisory powers of the United States Supreme Court to issue the writ of certiorari to the Illinois Supreme Court to determine the question of denial of due process by deprivation of counsel at an attorney disciplinary hearing.

ARGUMENT

I.

THE ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE ILLINOIS SUPREME COURT DENIED PETITIONER DUE PROCESS OF LAWY BY REFUSING TO GRANT A CONTINUANCE AND DEPRIVED PETITIONER OF ASSISTANCE OF COUNSEL DURING THE HEARING PANEL PROCEEDING. THE RIGHT TO COUNSEL DURING AN ATTORNEY DISCIPLINARY PROCEEDING IS A QUESTION OF PROCEDURAL DUE PROCESS THAT HAS NOT BEEN PREVIOUSLY DETERMINED BY THIS COURT.

Due process fundamentally requires that the procedures of the Attorney Registration and Disciplinary Commission (the Commission) afford the petitioner the opporutnity to be heard "at a meaningful time and in a meaningful manner."

Armstrong v. Masszo, 380 U.S. 545, 552 (1965). The States have broad power to regulate the "practice of professions within their boundaries, especially the legal profession because it is essential to the primary governmental function of administering justice." Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975).

> The Illinois Supreme Court "has the inherent power to regulate the admission of attorneys to the practice of law, and to discipline attorneys who have been admitted to practice before it. The disciplining of attorneys is in the nature of an original proceeding in which the Attorney Registration and Disciplinary Commission and its various

> officers, as well as the Inquirey Board, the hearing panel, and the Review Board serve only as agnets of this court in administering the disciplinary functions that have been delegated to them." In re Mitan, 75 Ill.2d 118, 122 387 N.E.2d 278, 280 (1979) cert. denied 444 U.S. 916 (1979).

Therefore, the Illinois Supreme Court has delegated its power to administer the discipline of attorneys to the Commission. The procedures of the Commission and hearing panel are subject to the requirements of the Fourteenth Amendment to the United States Constitution . . . "(N)or shall any state deprive any person of life, liberty, or property, without due process of law; . . . "

A. The Practice Of Law Is A Property Right Which Cannot Be Deprived By The State Without Due Process Of Law.

The right to follow learned professions, such as law and medicine, is "one of the fundamental rights of citizenship." "A person's business, profession, or occupation is . . . 'property' within the meaning of the constitutional provision as to due process of law. . . " People v. Love, 298 Ill. 304, 307, 131 N.E. 809, 811 (1921).

Petitioner was deprived of his constitutional property right to practice law for two years by the decision of the Illinois Supreme Court. This decision was made as a result of the findings and recommendations

of the Hearing Panel and Review Board. The procedures of the "agents" of the Illinois Supreme Court are subject to the requirements of due process even though the Court has held that technical objections to the practice and procedures before commissioners will not be considered. In re Czachorski, 41 Ill.2d 549, 553, 244 N.E.2d 164, 167 (1969). This is contrary to the decisions of the United States Supreme Court.

"The requirements of procedural due process must be met before a State can exclude a person from practicing

law." Willner v. Committee on Character and Fitness, 373 U.S. 96, 102 (1963). The rquirements of fairness extend to the beginning, intermediate and concludirg parts of the procedure as well as in the consideration of evidence. Id., at 105. Although Willner addresses the issue of procedural due process in the admission of attorneys to practice, it is important to note that the role of the Committee was determined to be more than advisory and investigative. In Willner, the petitioner was denied due process of law (deprived of the right to pursue his livelihood) by the action of the state when he was denied admission to the bar without a hearing. 373 U.S. 98, 106.

Petitioner herein was afforded a hearing before the deprivation of his property right but the actions of the hearing panel in denying petitioner a continuance and the assistance of counsel violated due process requirements. Fairness required that the hearing panel grant the motion for continuance so that petitioner's counsel could be present. Petitioner had been involved in a court proceeding that did not allow him to meet with his attorney or adequately prepare for the hearing. (Tr. pp. 5-9). The hearing was held just five weeks after service of the complaint.

In two attorney disciplinary suits, the Illinois Supreme Court held that the denial of a continuance was not a denial of due process and that the attorneys were not arbitrarily compelled to proceed without counsel. In re W. M. Smith, 75 Ill.2d 134, 139, 387 N.E.2d 316, 319 (1978), cert. denied 444 U.S. 841 (1979); In re Steinbrecher, 53 Ill.2d 413, 418 292 N.E.2d 422, 425 (1973). In re W. M. Smith, the attorney had been granted one continuance and had been served with the complaint three months before the hearing date. 75 Ill.2d 134, 387 N.E.2d 316 (1978), cert. denied 444 U.S. 841 (1979). In re Steinbrecher, the attorney

had answered the complaint nine months before requesting a continaunce and participated in the hearing without objection. 53 Ill.2d 413, 292 N.E.2d 422 (1973).

In the present case, the denial of a continuance five weeks (not three or nine months) after service because the petitioner did not follow the technical rules of the Commission deprived petitioner of a fair hearing. The procedures of this hearing ultimately affected the deprivation of his property interests. The procedural rules of the Commission direct the Administrator to conduct orderly and timely proceedings with due

regard for the rights of the attorney. In re Mitan, 75 Ill.2d 118, 124, 387 N.E.2d 278, 281 (1979) cert. denied 444 U.S. 916 (1979). The procedural rules should not be inflexible and rigid when the destruction of an attorney's professional life, reputation and livelihood are at stake. Due process is a flexible concept which calls for such procedural protections as the situation demands. Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

"The requirements of procedural due process apply only to the deprivations of interests encompassed by the Fourteenth Amendment's protection of liberty and property." Board of Regents v. Roth, 408

U.S. 564 (1972). Suspension of an attorney from the practice of law for two years would be included in the court's definition of property as an acquired interest to which a person has a legitimate claim. Id. at 576, 577. The petitioner herein had built up a practice or business after twenty-five years in the legal profession and his "good name, reputation, honor, or integrity" was at stake in the disciplinary proceedings. Id. at 573. The petitioner had acquired significant interest in the continuance of his legal career without interruption or suspension by state action.

Therefore, the practice of law is a property right which is safeguarded from deprivation by the State by the due process clause of the Fourteenth Amendment. Petitioner's suspension from practice for two years by the Illinois Supreme Court resulted from a denial of due process at the hearing panel proceeding. The Hearing Panel did not follow the dictates of fundamental fairness in denying a continuance and depriving petitioner of the assistance of counsel.

B. The Nature Of Attorney Disciplinary Proceedings Is Quasi-Criminal Which Requires The Assistance Of Counsel.

The United States Supreme Court has defined attorney disciplinary proceedings as "adversary proceedings of a quasi-criminal nature." In re Ruffulo, 390 U.S. 544, 551 (1968). There has been confusion, however, in the characterization of attorney disciplinary proceedings by the federal and state courts. Grossgold v. Supreme Court, 557 F.2d 122, 125 (7th Cir. 1977) held that disciplinary proceedings of a state supreme court are judicial in nature. In re Echeles, 430 F.2d 347 (7th Cir. 1970)

held that disbarment and suspension proceedings are neither civil nor criminal in nature but are special proceedings which result from the inherent power of courts over their officers.

The Illinois Supreme Court has vacilated in its classification of disciplinary proceedings from civil in nature. In re Eaton, 152 N.E.2d 850, 14 Ill.2d 338 (1958); In re Kettles 365 Ill. 168, 6 N.E.2d 146 (1937), to neither civil nor criminal. In re Czachorski, 41 Ill.2d 331, 244 N.E.2d 164 (1969), In re Yablunky, 407 Ill. 111, 94 N.E.2d 841 (1950). The Illinois Supreme Court, however, has emphasized the investigative

nature of the proceeding, (see In re Czachorski, and In re Goldstein, 411 Ill. 360, 104 N.E.2d 227 (1952) although the proceedings before the Hearing Board are conducted according to the rules of practice in civil cases. In re Eaton, 14 Ill.2d 338, 152 N.E.2d 850 (1958) Illinois Supreme Court Rule 753(c) (Ill. Rev. Stat., 1975, ch. 110A, par. 753).

Neither the Illinois Supreme Court nor the Court of Appeals for the Seventh Circuit are in accord with the United States Supreme Court decisions concerning the nature of the disciplinary proceedings. Further support for the United

States Supreme Court's position in In re Ruffulo (quasi-criminal nature) is Spevack v. Klein, 385 U.S. 511 (1967). Spevack extends the privilege against self-incrimination to an attorney in a disciplinary procedding. Both Spevack and In re Ruffulo emphasize that disbarment (or suspension) is a punishment or penalty imposed on the lawyer. 385 U.S. 511, 515, 390 U.S. 544, 551. This is in contrast with the position that the purpose of disciplinary proceedings is not to punish an attorney but to safeguard the public and maintain the integrity of the legal profession. In re Levin, 77 Ill.2d 205, 395 N.E.2d 1374 (1979), In re Echeles, 430 F.2d 347 (7th Cir. 1970).

Disbarment or suspension while protecting the public, does punish an attorney. His/her livelihood and reputation are threatened by the proceedings. An attorney is entitled to procedural due process in disciplinary proceedings which includes fair notice and a fair hearing. In re Ruffulo, 390 U.S. 544, 550 (1972). The failure of the Illinois Supreme Court to follow the decisions of this Court concerning the nature and purpose of attorney disciplinary proceedings resulted in a deprivation of due process to petitioner. This Court should grant the writ of certiorari to correct this erroneous interpretation.

Procedural due process also requires that an attorney have the assistance of counsel at a disciplinary proceeding. "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." Powell v. Alabama, 287 U.S. 45, 68-69 (1932). In Reynolds v. Cochran, 365 U.S. 525 (1961), the Supreme Court quoted with apporval from Powell v. Alabama, 287 U.S. at 69, stating: "If in any case civil or criminal, a state or federal court was arbitrarily to refuse to hear a party by counsel. . ., it reasonably may not be doubted that such a refusal would be

a denial of a hearing, and, therefore, of due process in the constitutional sense."

Therefore, fundamental fairness requires that an attorney at a disciplinary proceeding, which is quasi-judicial in nature and acts to punish an attorney, have the assistance of counsel. It is true in the present case that petitioner was represented by counsel before the Review Board and Illinois Supreme Court. However, the arbitrary denial of counsel at the hearing panel occurred at the crucial point in the proceedings where the Commission heard the testimony of

witnesses. In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Goldberg v. Kelly, 397 U.S. 254, 269 (1970).

Petitioner was forced to proceed before the Hearing Panel without the assistance of counsel because of the denial of continuance. He was able to confront and cross-examine witnesses himself, but he was denied the right to the assistance of counsel specifically engaged to represent him. This was a denial of due process of law.

Procedural due process requires the right to counsel in proceedings that deprive a person of his livelihood. Willner v. Committee on Character and Fitness, 373 U.S. 96, 103 (1963). The Hearing Panel does more than an investigative function. It adjudicates the rights of the attorney which may plead to the deprivation of the attorneys' livelihood through disbarment or suspension. "The panel shall make findings of fact and conclusions of fact and law, together with a recommendation for discipline, dismissal of the complaint or petition, or nondisciplinary suspension." Illinois Supreme Court Rule 753(c) (Ill. Rev. Stat., 1975

ch. 110A, par. 753).

The first hearing panel recommended censure for the petitioner. Petitioner was represented by counsel during this hearing. The second hearing panel recommended a three year suspension. Petitioner was not represented by counsel during the hearing. The Review Board followed the recommendation of the second hearing panel in making its report to the Illinois Supreme Court. Petitioner was denied due process of law by the second hearing panel and was subsequently deprived of his livelihood for two years. This action of the Commission and Illinois Supreme Court was contrary to the Fourteenth Amendment.

In Brown v. Air Pollution Control Board, 37 Ill.2d 450, 227 N.E.2d 754 (1967), the Court held that appellant was denied due process of law through the Board's failure to grant a continuance and subsequent denial of the right to counsel. The Court quoted with approval from Yiannopoulos v. Robinson, 247 F.2d 655, 657 (7th Cir. 1957) stating: "Among the guarantees of a fair hearing without which there would be an absence of procedural due process are reasonable notice, the right to examine witnesses to testify, to present witnesses, and to be represented by counsel." 37 Ill.2d 450, 453, 227 N.E.2d 754, 756. Although

the Board disregarded a prior written request for a continuance in contrast to the facts of the present case, the holding of the Court is important to illustrate the right to be represented by counsel before an administrative agency which investigates and adjudicates. (Accord, Hannah v. Larche 363 U.S. 420, 442 (1960).

This right to counsel for an administrative agency was recognized in Ullmen v. Department of Registration and Education, 67 Ill. App.3d 579, 385 N.E.2d 58 (1978). "A desire to dispose of a matter pending before an administrative body and to reach

a speedy decision cannot be allowed to imperil the fundamental right an accused has to the effective assistance of counsel." Id. at 593, 293.

In both of these Illinois Supreme Court decisions, a person appearing before an administrative board was deprived the right to counsel which resulted in a denial of due process. Whether the hearing panel is characterized as having a quasi-judicial function or acts in the manner of an administrative agency which adjudicates and investigates, the attorney

appearing before the panel has the right to the assistance of counsel. The deprvation of that right by the denial of a continuance is a denial of due process. Petitioner did not receive a fair hearing in the absence of assistance of counsel.

C. The Risk Of Erroneous Deprivation Of The Right To Practice Law Is Great Compared To The State Interest In Regulating The Profession.

". . . (T)he disbarment of an attorney is the destruction of his professional life, his reputation and his livelihood. . ." In re Heirich, 10 Ill.2d 357, 377, 140 N.E.2d 825, 841 (1956). The suspension of an attorney for two years is comparable to disbarment in the effect it has on the attorney's professional life. An attorney's temporary loss of clients and professional standing leads to a permanent destruction of his

reputation and livelihood. This destruction of a person's livelihood by state action is a deprivation of property protected by the due process guarantees of the Fourteenth Amendment.

After establishing the deprivation of an individual's property interest, the United States Supreme Court has used a balancing test to determine due process requirements. Mathews v. Eldridge, 424 U.S. 319 (1976).

> . . ."(I)dentification of the specific dictates of due process generally requires consideration of three distinct

> factors: First, the private interest that will be effected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest including the function involved and the fiscal and administrative burdens that the additional and substitute procedural requirement would entail." Id., at 335.

It has been established that the suspension of an attorney for two years is a deprivation of a property interest by a state protected by the Fourteenth Amendment. Attorney disciplinary proceedings

require due process including the right to be heard and represented by counsel. The private interest affected by the state action is a fundamental property right, the right to practice law and continue a livelihood.

The risk of erroneous deprivation of this right through the procedures used can be shown in this case by result of the failure to afford the petitioner the constitutional process here. Petitioner should have been granted a continuance and should have been represented by counsel

at the Hearing Panel. The ultimate result of this failure of due process was a deprivation of a fundamental property interest. The findings and recommendation of the Hearing Panel led to the suspension of petitioner from the practice of law for two years.

The Illinois Supreme Court has held that "the findings and recommendations of the hearing panel and the Review Board, although entitled to virtually the same weight as the findings of any trier of fact, are nonetheless not binding on

the court but are advisory only." In re Mitan, 75 Ill.2d 118, 121, 387 N.E. 2d 278, 279 (1978). Since all disciplinary cases are original proceedings in the Supreme Court, the findings are subject to an independent review. However, this holding by the Court fails to consider the limitation that the hearing panel is the setting for the adversary proceeding and the Court reviews pre-determined findings of fact and law. As stated earlier, due process requires the assistance of counsel before the Hearing Panel

even though the findings are "advisory only".

Substitute procedural safeguards are not required at the Hearing Panel proceeding. Fundemental fairness requires that the petitioner be heard at a meaningful time and in meaningful manner. The arbitrary denial of a continuance should be grounds for a rehearing. The Supreme Court of Illinois is in error in holding that technical objections to the practices and procedures of the Commission will not be considered. Objections to procedure

should always be considered in the light of due process safeguards of fundamental rights. Every step in the disciplinary proceedings should be fair. This Court should grant the erroneous interpretation of the law by the Illinois Supreme Court.

The Government's interest in attorney disciplinary proceedings is to regulate the profession to protect the public and punish attorney misconduct. Since a hearing is already a required procedure, there is no need to discuss additional procedural requirements. Petitioner is not claiming

that the Illinois attorney disciplinary process is lacking in fairness, but that he was arbitrarily denied a fair hearing and review. The Commission rules particularly 8.2 - Continuances should not be mandatorily enforced when fairness demands flexibility.

The potential deprivation to petitioner is great compared to the state interest in regulating the profession by the strict adherence to Commission Rules and then not considering objections to procedures. Due process requires the balancing of the con-

siderations of private interest, risk of erroneous deprivation and the state interest. The fundamental property interest of petition and risk of erroneous deprivation outweigh the state interest in regulating the practice of law according to the Commission procedures. The petitioner should have been granted a continuance and should have been afforded the right to be represented by counsel before the Hearing Panel. Denial of these rights was a denial of due process. The State of Illinois suspended petitioner from

the practice of law in violation of the Fourteenth Amendment.

The failure of the Illinois Supreme Court to provide due process protections to petitioner at every level of the disciplinary proceeding is inconsistent with the fundamental decisions of this Court regarding due process. The Fourteenth Amendment as interpreted by this Court requires that petitioner have the right to be represented by counsel at an administrative or quasi-criminal proceeding that may deprive him of a fundamental

property right. The procedures of the "agents" of the Illinois Supreme Court need to conform to the constitutional due process standards which require fundamental fairness and flexibility at the hearing. The grant of certiorari by this Court is necessary to protect petitioner's livelihood from deprivation without due process of law as required by the Fourteenth Amendment.

II.

THE ILLINOIS SUPREME COURT DEPRIVES A DISCIPLINED ATTORNEY OF DUE PROCESS OF LAW BY REFUSING TO ARTICULATE STANDARDS FOR IMPOSING SANCTIONS. THE NECESSITY FOR A STATE TO ESTABLISH CLEAR STANDARDS OF PUNISHMENT FOR ATTORNEY MISCONDUCT AND CONSISTENTLY CONSIDER OTHER FACTORS IN IMPOSING SANCTIONS IS A FEDERAL QUESTION THAT HAS NOT BEEN PREVIOUSLY DETERMINED BY THIS COURT.

Petitioner was suspended from the practice of law for two years for commingling and conversion of client's funds. In re Grant, 89 Ill.2d 247, 251, 443 N.E.2d 259, 261 (1982). Other cases involving similar offences ranged from disbarment (In re

Snitoff, 53 Ill.2d 50, 289 N.E.2d 428 (1972)) to censure (In re Clayter, 78 Ill. 2d 276, 399 N.E.2d 1318 (1980)). Petitioner had made restitution, gave evidence of good character and reputation with no previous misconduct and was found to lack dishonest motives. In re Grant, 89 Ill.2d at 251, 433 N.E.2d at 261. The Illinois Supreme Court, however, did not articulate the standard used in determining the sanction imposed on petitioner.

A. The Illinois Supreme Court Imposes Consistent Sanctions On Disciplined Attorneys.

The Illinois Supreme Court does not impose specific sanctions for specific attorney misconduct. The Court's "standard" is a balance between selecting uniform sanctions and deciding each case on its own merits. In re Andros, 64 Ill.2d 419, 356 N.E.2d 513 (1976). The purpose of the sanctions imposed, disbarment, suspension and censure, is to safeguard the public and maintain the integrity of the profession. In re Saladino, 71 Ill.2d 263, 270

375 N.E.2d 102, 106 (1978).

The length of a suspension should be closely tied to the harm caused or unreasonably risked because of lack of care. In re Kien, 69 Ill.2d 355, 366, 372 N.E. 2d 376, 381 (1977) (Clark, J., concurring in part and dissenting in party). If the length of suspension imposed is not "based upon an articulated standards, it provides insufficient guidance for our selection of sanctions in future cases. Without such guidance, the sanctions imposed in future cases are likely to remain unpre-

dictable and lack the appearance of fairness. Id., at 364, 380. Justice Clark indicated that the continued adherence to a case-by-case "totality of circumstances" approach leaves Illinois standards opaque and the sanctions unpredictable. Id., at 366, 381.

Not only does the Illinois Supreme Court impose inconsistent sanctions, it also arbitrarily and unevenly applies aggravating and mitigating factors. In re Grant, 89 Ill.2d 247, 254, 433 N.E. 2d 259, 263-64 (1982) (Moran, J., dissent-

ing). Financial and emotional problems, restitution, prior misconduct and an exemplary record have not been considered consistently in attorney disciplinary cases. Id., at 254-256, 263-265. These dissenting opinions by the Justices of the Court point out the unpredictability and unfairness of non-uniform standards and sanctions.

Because this Court views attorney disciplinary proceedings as quasi-criminal with the purpose of punishing attorneys, the Illinois Court should impose consistent

sanctions to conform to the practice in criminal law. At least the doctrine of "stare decisis" should apply to the selection of sanctions for attorney misconduct.

B. Unspecific Standards Do Not Meet The Notice Requirements Of Procedural Due Process.

Procedural due process requires that an attorney subject to disciplinary proceedings receive a fair hearing, Willner v. Committee on Character and Fitness, 373 U.S. 96, 105 (1963), and fair notice

of the charge. In re Ruffulo, 390 U.S. 544,550 (1968). Petitioner, herein did receive fair notice of the charge, but he had not received notice from the decisions of the Illinois Supreme Court that certain conduct was uniformly punished.

"A relevant inquiry in appraising a decision to disbar is whether the attorney stricken from the rolls can be deemed to have been on notice that the courts would condemn the conduct for which he was removed." In re Ruffulo, 3890 U.S. at 554. (White, J., concurring). This inquiry

into notice would be relevant in an attorney suspension decision, also. When the disbarment or suspension standard if unspecific, attorneys generally know what conduct is condemned, Id., but there is still a question of notice as to specific behavior which is not generally known to be improper or punished inconsistently.

Petitioner herein, who was suspended for commingling and conversion, inadvertently committed errors in maintaining his accounts and records. There was no

dishonest motive on his part (Tr. 60-62). Petitioner was not put on notice by the Illinois Supreme Court that this behavior warranted a suspension "technical" commingling and conversion resulted in censure, not suspension. In re Sherman, 60 Ill.2d 590, 328 N.E.2d 553 (1975). Specifically, petitioner did not know that the conduct was condemned nor that the penalty was suspension. Petitioner was denied due process of law because he was not given adequate notice that the procedure was condemned

and punished by suspension.

Generally, attorneys in Illinois know what behavior is condemned by the Illinois Code of Professional Responsibility (approved and adopted by the Illinois State Bar Association, 1977). Specifically, however, Illinois attorneys do not know what behavior is punished or to what extent. Because the Illinois Supreme Court has not clearly articulated the standards for imposing sanctions on disciplined attorneys, they are denied due process of law for lack of adequate

notice.

The failure of the Illinois Supreme Court to establish uniform and predictable standards for imposing sanctions on attorneys is inconsistent with this Court's decisions which define the parameters of the notice requirement of due process. The grant of certiorari by this Court is necessary to ensure that petitioner and other attorneys are afforded the due process of law in attorney disciplinary proceedings protected by the Fourteenth Amendment.

CONCLUSION

For the reasons set out above, petitioner respectfully submits that this Petition for Writ of Certiorari should be granted and the decision of the Illinois Supreme Court should be reversed.

Respectfully submitted,*

WILLIAM J. HARTE, LTD.
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(312) 726-5015
Attorney for Petitioner

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*Petitioner's counsel acknowledges the assistance of Lou Ann Reichle in the preparation of this brief.

OPINION
SUPREME COURT
OF ILLINOIS

United States of America

State of Illinois)
Supreme Court) SS.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of January in the year of our Lord, one thousand nine hundred and eighty-two, within and for the State of Illinois.

PRESENT: HOWARD C. RYAN, CHIEF JUSTICE JUSTICE ROBERT C. UNDERWOOD JUSTICE DANIEL P. WARD JUSTICE JOSEPH H. GOLDENHERSH JUSTICE WILLIAM G. CLARK JUSTICE THOMAS J. MORAN JUSTICE SEYMOUR SIMON

TYRONE C. FAHNER, ATTORNEY GENERAL

LOUIE F. DEAN, MARSHALL

ATTEST: ROBERT H. GILLESPY, CLERK

Be it Remembered, that afterwards, to wit, on the 19th day of February, 1982 the opinion of the Court was filed in said cause and entered of record in the words and figures following, to wit:

APPENDIX A

In re:)

Arthur H. Grant, an Attorney) Disciplinary

No. 54243) Commission

)

ROBERT H. GILLESBY
CLERK OF THE SUPREME COURT
STATE OF ILLINOIS

Docket No. 54243--Agenda 10--September 1981.

In re ARTHUR H. GRANT, Attorney, Respondent.

JUSTICE UNDERWOOD delivered the opinion of the court:

In these consolidated disciplinary proceedings the Review Board of the Attorney Registration and Disciplinary Commission has recommended that respondent, Arthur H. Grant, be suspended from the practice of law for a period of three years and until further order of the court. The matter is before us on respondent's exceptions to that recommendation.

Separate complaints were filed by the Administrator and heard by separte panels. The first complaint, filed on December 19, 1978, charged respondent in separate counts with the commingling and wrongful conversion of client funds belonging to Edward A. Washington and Leroy Brawner and a failure to promptly pay to them monies to which they were entitled, all in violation of Canon 9 DR9--102(B)(4) and Canon 1 DR 1--102(A)(4) of the Illinois Code of Professional Responsibility as approved and adopted by the Illinois State Bar Association (1977). (See 84 Ill. 2d Rules 9--102 (c)(4), 1--102(a)(4).) A subsequent amendment added a count containing similar allegations as to fund belonging to Leroy Jackson. The second complaint, filed in March 1980, charged conversion of the funds of Herbert Brock, Annie Bright and Arvilla Donald.

Respondent was admitted to practice in Illinois in 1954. The complaints arise from his handling of money received as settlement of four separate cases during 1977-78. Respondent maintained several bank accounts in different banks during this period. Some of the accounts were designated trust accounts; however, he used all of them for personal and business purposes as well as for clients' funds. Bank statements indicate that

several of these accounts, among them those in which complainants' funds were placed, were overdrawn on several occasions.

In June 1977, respondent received a check in settlement of Edward Washington's personal injury claim and deposited it in a "trust account." In September, respondent issued a check for $980.67 to his client, which represented his share. That check was returned due to insufficient funds. Later that month respondent issued a replacement check drawn upon a different bank which was honored upon presentation. The "trust account," which was also used by respondent for his personal and business expenses, had been overdrawn several times between the end of July and the end of September.

In September 1977 respondent received a check in settlement of a personal injury claim he had filed on behalf of Leroy Brawner. He had his client endorse the draft on September 22 and told him he would receive his money in about two weeks. The client testified that in mid-November he made several calls and one trip to respondent's office but never was able to talk to or see respondent. On December 1, respondent cashed the check. Mr. Brawner testified that he talked to respondent in December

about the check and was told that the check had not cleared. Respondent denies that this conversation occurred. On January 9, 1978, the client filed a disciplinary complaint. Respondent's secretary testified that in January and February she made several unsuccessful attempts to contact Mr. Brawner, and that on March 7 the client's money was paid in cash at the respondent's office from money taken from an envelope in the client's file. Respondent testified that for a time that file could not be found but the cash had been in it since December. He also testified that the client had expressed a preference for being paid in cash.

Around November 5, 1978, respondent received a check in settlement of a claim filed on behalf of Leroy Jackson. Mr. Jackson endorsed the draft and respondent deposited it in a "trust account." This account was also used by respondent for business and personal expesnes as well as to cover overdrafts from another account. Because of his inability to obtain his money from respondent, Mr. Jackson retained another attorney to represent him in his collection efforts and to pursue another matter for which respondent had previously been engaged. Respondent claimed that his client owed him for services on the other case and that negotiations broke down when the cleint's new attorney refused to accept the check less those

fees. The client filed a complaint with the Commission in December 1978, and, on advice of counsel, respondent sent the settlement funds in the amount of $4,600 to Mr. Jackson the following June, withholding only "out-of-pocket expenses and fees" in connection with the settled claim. The balance of the account in which these funds had been held had on several occasions between November 1977 and June 1979 fallen below the amount owed Mr. Jackson.

In April 1977, respondent received checks in settlement of accident claims filed on behalf of Annie Bright, Arvilla Donald, and Herbert Brock. These checks were endorsed by respondent through a power of attorney and cashed by him on July 10. In April 1978, Herbert Brock learned from the insurance company that the case had been settled and called respondent about the money. Respondent issued him a check for $783.28, which was returned because of insufficient funds. A replacement check was issued immediately and honored. In December, respondent was contacted by Mrs. Walton, a relative of clients Annie Bright and

Arvilla Donald who lived out of State. Mrs. Walton complained that the clients had not been paid, and was told by respondent that he would mail them a check. Subsequently Mrs. Walton, a Chicago relative of out-of-state clients Annie Bright and Arvilla Donald. Mrs. Walton complained no response, and the matter was referred to the Commission. After the complaint was filed, respondent paid the clients, through Mrs. Walton, their shares of the settlement, $101 each. Respondent testified and supported by affidavit filed after the hearing that a former secretary had been given cash to purchase money orders for these clients but that she failed to do so and instead converted the money to her own use and hid the files.

Six attorneys, including past and present presidents of the Cook County Bar Association, testified as to respondent's long involvement in community activities and pro bono work for indigents. That testimony also established that respondent had received from the Cook County Bar Association its Westbrook award, which was one of four awards given annually to its outstanding members.

The panel which heard the complaint concerning the transactions with Washington, Brawner, and Jackson found that respondent had improperly commingled funds and, with respect to Washington and Jackson, had committed a "technical conversion" when the balance of the trust accounts fell below the amount owed these clients. The panel found "no evidence of dishonest motive" and noted that "respondent's difficulties (arose) from extremely sloppy bookkeeping practices and a failure to properly communicate with clients***." The panel noted the testimony of the character witnesses earlier referred to and recommended respondent's censure.

The panel hearing the complaint concerning Bright, Donald and Brock did so some nine months after the first hearing. Respondent was served with the complaint on April 7, 1980, but failed to answer or in any way respond thereto prior to the hearing, although he had earlier respondent to a letter of the Commission in August 1979, by enclosing a letter from Mrs. Walton, dated August 16, 1979, stating that she had received payment from the respondent and requesting that the complaint be dismissed. Respondent appeared at the hearing without counsel and requested a continuance so that he might be represented. Since

it appeared that respondent had not contacted his attorney until just a few days before the hearing, the panel denied this motion and ruled that the allegations of the complaint be deemed admitted because of the failure to answer. Respondent testified in his own behalf but presented no character witnesses as he had in the former hearing. This panel found that respondent's acts constituted conversion of client's funds in violation of DR 9--102(B)(4) of the Illinois Code of Professional Responsibility (Illinois State Bar Association 1977), which conduct was "unethical, unprofessional and tends to bring the courts and the legal profession into disrepute." It was recommended that he be suspended for three years and until further order of the court.

The Review Board majority, emphasizing that far more occurred here than just the "technical conversion of the client's funds" as the panel hearing the matters concerning conduct in that proceeding, stated that it was "only with great reluctance" that it recommended the three years suspension rather than the disbarment which two members of the Board considered appropriate. It aptly described what occurred here:

"In each of the cases, funds of the client were not delivered to the client when they should have been or when they were requested. In each of the cases, the funds were, in fact, put to the attorney's own use so that when asked he was unable to comply with his client's demands to pay over funds rightfully due the client.

Furthermore, in our review, the record clearly establishes that these are not isolated examples of missed communications and oversights but, rather, represents an established standard of practice engaged in by the Respondent. That his conduct clearly violates Canon D.R. 9-102 (A)(2), (B)(4) is beyond dispute. Nor can it be disputed that the conduct of the Respondent is the type calculated to bring disrepute upon the law and the profession.

The loose, careless and dilatory practices followed by the Respondent in the handling of an accounting for, or more accurately, the failure to account for funds entrusted to him is clearly an abuse of the privilege secured to him by his license***."

Given the requency with which this court has emphatically and unequivocally condemned the commingling of clients' funds with the attorney's own (e.g., In re Clayter (1980), 78 Ill.2d 276, 278-79. See also, In re Schlax (1980), 81 Ill.2d 66; In re Brody (1976), 65 Ill.2d 152; In re Sherman (1975), 60 Ill.2d 590; In re Bloom (1968), 39 Ill.2d 250; In re Lingle (1963), 27 Ill.2d 459), it seems incredible that the practice persists. As was pointed out in Clayter (78 Ill.2d 276, 281), commingling is frequently the first step toward conversion. Too, in case of death or insolvency of the lawyer, client funds commingled with his own may well become assets o the lawyer's estate, relegating the rightful owner of the funds to the status of a general creditor. The hazards involved in commingling, coupled with the actual conversion of funds occurring here, render explanations such as "poorbookkeeping," "failure to fully understand the duty" and "no dishonest motive" completely unacceptable.

During 1977 and 1978 bank statements indicate that the accounts used by respondent for clients' funds were overdrawn on

numerous occasions. Twice respondent gave checks to clients which were returned due to insufficient funds. Several times payments to clients were inexplicably and inexcusably delayed-six weeks elapsed between the time Washington endorsed his check and respondent issued a check which was returned for insufficient funds, and 10 months elapsed between the time respondent received Brock's settlement check and respondent issued a check which was also returned because of insufficient funds. Leroy Brawner secured payment of his settlement proceeds only after some 15 months' delay and a complaint to the Commission; Leroy Jackson was paid his workers' compensation settlement only after employing counsel to collect from respondent. More than 1-1/2 years' delay intervened between receipt by respondent of the settlement drafts for Annie Bright and Arvilla Donald and his payment to them. Respondent ignored calls and letters from his clients and the Chicago Bar Association, and he failed to answer the

complaint in the Brock inquiry. Carelessness, sloppy bookkeeping, overwork, or poor staff cannot excuse this type of conduct; rather, these factors, even where no dishonest motives exist, tend to bring the entire profession into disrepute.

Respondent concedes that he has commingled funds and has "technically" converted clients' funds, but he urges that because of his previously unblemished record, his strong character references, and his significant history of community service and pro bono work, a sanction of three years' suspension is too harsh a penalty, particularly since neither hearing panel found dishonest motives and all clients were paid what was due them.

A determination that the conduct which occurred here requires discipline is considerably less difficult than the determination of the nature and extent of the discipline. Our cases involving commingling or commingling and conversion reveal disciplinary action ranging from disbarment (In re Snitoff (1972), 53 Ill.2d 50; In re Lingle (1963), 27

Ill.2d 459 (to censure (In re Clayter (1980), 78 Ill.2d 276), depending upon the circumstances of the individual case. Considering our obligation to protect the public and insure the integrity of the profession (In re Snitoff) in light of the evidence establishing a patter of repeated commingling and conversion of funds, we believe suspension for two years is appropriate. We do not consider necessary, however, the additional provision recommended by the board that suspension continue until our further order, a condition generally reserved for those situations where the disciplined attorney is emotionally unstable. In re O'Hallaren (1976), 64 Ill.2d 426, 434.

Respondent suspended.

JUSTICE MORAN, dissenting:

In attorney disciplinary cases, this court has consistently reiterated the statement made in In re Andros (1976), 64 Ill.2d 419, 425-26: "While a degree of uniformity in the application of attorney discipline is desirable, each case must still be determined on its own

own merits." Although this court had held that the doctrine of stare decisis cannot be applied to the specific discipline meted out in any particular case (In re Nesselson (1966), 35 Ill.2d 454, 461), I fear that, too often, principles of uniformity are unduly minimized. Certainly the circumstances of each case should be taken into account. However, it is imperative that consistency be established to assure imposition of like sanctions under similar circumstances. For, as this court has also stated: "*** The courts must not exercise their supervisory control [over the legal profession] in an arbitrary manner, but must show a legal discretion in the exercise thereof. [Citation.]'" In re Alswang (1978), 71 Ill.2d 203, 209, quoting In re Donaghy (1948), 402, Ill. L20, 123.

A review of this court's decision in disciplinary cases demonstrates a lack of consistency in the sanctions imposed. Cases involving apparently similar misconduct have resulted in sanctions ranging from censure to disbarment.

For example, in In re Clayter (1980), 78 Ill.2d 276, an attorney commingled and converted $1,000 that he hald as earnest money for the parties to a real estate transaction. The court considered a number of mitigating circumstances and concluded that censure would be an appropriate sanction. Yet, in In re Agin (1970), 45 Ill. 2d 126, where attorney settled a personal injury claim and failed to remit the proceeds to his client until demanded, the court ordered him suspended for one year. Although the court

considered mitigating circumstances, it determined that respondent's misconduct warranted stern discipline.

In In re Melin (1951), 410 Ill. 332, the attorney converted and commingled funds from two estates, and was grossly negligent in the performance of his duties. Noting only the attorney's good reputation, the court ordered that he be censured and suspended from the practice of law for three months. Similarly, in In re Borchardt (1934), 357 Ill. 458, the attorney commingled and converted the funds from two estates, yet he was suspended for two years and until such time as complete restitution was made. This sanction was imposed despite the court's consideration of numerous mitigating factors, such as the attorney's long and honorable career at the bar, the fact that he intended to made complete restitution, and his candor in admitting the wrong committed.

In In re Callas (1980), 82 Ill.2d 6, an attorney, in his capacity as head of the corporate trust department of a

bank, authorized a $25,000 advance to a corporation that furnished computer services to the bank. At the time of the loan, the attorney was personally indebted to the corporation for the $25,000 amount. Respondent pleaded guilty to Federal charges of embezzlement and conversion. This court found that the misapplication and conversion of $25,000 was a serious violation of important professional responsibilities with which respondent had been entrusted. The court did not discuss factors mitigating the misconduct, and suspended the attorney for nine months. Yet, in In re Patt (1980), 81 Ill.2d 447, an attorney was convicted of the Federal offense of embezzlement. This court stated, "The embezzlement or conversion of a client's funds is an act involving moral turpitude and is a gross violation of the attorney's oath which warrants disbarment in the absence of mitigating circumstances." (81 Ill.2d 447, 453, citing In re Stillo (1977), 68 Ill.2d 49, 54.) The court

noted that because respondent offered no evidence before the Hearing Board, the record disclosed no facts sufficient to mitigate the seriousness of respondent's offense. The attorney was disbarred.

Apparently, inconsistent sanctions are in some instances attributable to recognition of various factors mitigating an attorney's misconduct. However, a review of the cases illustrates the uneven and arbitrary application of the mitigating factors. Two factors often advanced by a respondent in mitigation are financial and emotional or family problems. In In re Smith (1976), 63 Ill.2d 250, an attorney converted proceeds from a client's settlement award to his own personal use. He offered evidence in mitigation to the effect that he suffered severe financial and emotional problems during the time of the alleged misconduct. In ordering that the attorney be disbarred, this court indicated that personal difficulties would not excuse the misconduct. This court, in other disciplinary cases involving conver-

sion, has recognized that personal problems would not excuse the attorney's actions, and ordered suspension. (In re Simpson (1971), 47 Ill.2d 562; In re Abbamonto (1960), 19 Ill.2d 93). However, in still other cases involving conversion, this court has used personal or domestic difficulties as a mitigating circumstance in arriving at a sanction of suspension. (In re Driscoll (1981), 85 Ill.2d 312; In re Bass (1971), 49 Ill.2d 269). In Bass, family problems (along with an impressive war record) were allowed as mitigation resulting in a one-year suspension even though, in addition to conversion, the attorney failed to prosecute suits, failed to notify a client he had not filed a suit in a case, and was convicted for income tax evasion. In yet other cases, not involving conversion, this court has considered family or emotional problems as a mitigating circumstance reducing the sanction imposed. E.g., In re Hopper (1981), 85 Ill.2d 318; In re Chapman (1978), 69 Ill.2d 494; In re Andros (1976), 64 Ill.2d 419.

Another area of inconsistency has arisen in the court's approach toward restitution as a mitigating circumstance. In a number of cases, restitution of converted funds has been expressly or implicitly considered as a factor mitigating the seriousness of an offense. (See In re Costigan (1976), 63 Ill.2d 230; In re Bloom (1968), 39 Ill.2d 250; In re Power (1950), 407 Ill. 525). For example, in In re Turner (1979), 75 Ill.2d 128, an attorney, without authorization, signed the names of three clients on the back of a settlement check for $850, deposited the check in his personal account, and subsequently overdrew the account. He did not pay the clients until one day prior to the scheduled hearing before the Inquiry Board. In addition, the attorney gave false testimony before the Board.

This court compared the case to In re Stillo (1977), 68 Ill.2d 49 (where this court disbarred an attorney, who was dishonest before the Hearing Board, for commingling and converting funds) and suspended Turner for three years. The court noted his prior unblemished record and that he had made restitution to the parties. In In re Smith (1979), 75 Ill. 2d 134, respondent was charged with three separate instances of endorsing a client's name on a check, depositing the check in his own account and using the funds for his own purpose. The attorney made false representations to the clients regarding the money. Tis court held that the respondent's acts, together with the absence of attempts at restitution, candor or remorse, warranted respondent's disbarment.

In contrast, some cases specifically indicate that restitution will not excuse the improper conduct. (In re Feldman (Jan. 21, 1982), No. 55231; In re Sherman (1975), 60 Ill.2d 590.) In other cases, this court has distinguished between the effect of restitution made prior or subsequent to the initiation of a complaint. (See In re Brody (1976), 65 Ill.2d 152; In re Smith (1976), 63 Ill.

2d 250.) In still other situations attempts at restitution were not considered by the court in imposing a sanction. In re Cleveland (1981), 85 Ill.2d 520; In re Stillo (1977), 68 Ill.2d 49.

Another factor accorded inconsistent treatment by the court is the prior record of an attorney against whom a complaint has been brought. In In re Clayter (1980), 78 Ill.2d 276 (discussed above) and In re Sherman (1975), 60 Ill.2d 590, attorneys were guilty of commingling and converting their clients' funds. This court determined that censure was a sufficient sanction, partly because the attorneys were not cited for misconduct prior to the incidents in question. In In re Schlax (1980), 81 Ill.2d 66, where an attorney commingled and converted funds in a single instance, this court, taking into consideration character testimony, community service and otherwise exemplary professional conduct, suspended respondent for three months. Yet, in In re Gartland (1970), 47 Ill.2d 177, this court refused to consider the fact that the incident was the first misconduct by the attorney, who converted funds of a savings and loan institution. In imposing a one-year suspension, this court indicated it was not persuaded by the attorney's previously unblemished record because the

the first purpose of a disciplinary proceeding is "to safeguard the public, maintain the integrity of the profession and to protect the administration of justice from reproach." 47 Ill.2d 177, 183.

Finally, a deviation occurs even in the court's treatment of the principle that an exemplary record generally inures to the attorney's benefit while other prior disciplinary action, if considered, is to his detriment. For in In re Baker (1973), 55 Ill.2d 272, this court actually used a prior sanction as a mitigating circumstance. The court held that an attorney's misconduct warranted censure, rather than suspension, because "the conduct of the respondent which was the ground for his suspension for one year in 1967 was more reprehensible than the 1964 conduct now complained of and for which the Board advises a two-year suspension." 55 Ill. 2d 272, 274.

Notwithstanding the inconsistencies in the above-discussed disciplinary cases, I discern one relatively clear pattern. Continuing conduct involving commingling and conversion generally warrants an attorney's disbarment. Therefore, in the instant case, where the majority acknowleges that respondent's conduct involved

"a pattern of repeated commingling and converstion of funds" (slip op. at 7), I believe a sanction of disbarment is appropriate.

In several cases, conduct similar to or less egregious than that which occurred here has resulted in an attorney's disbarment. For example, in In re Feldman (1982), 89 Ill.2d 7, decided this same term, we ordered disbarment of the attorney for converting estate funds of two clients to his own personal use. In so holding, we noted that the wrong committed did not involve an isolated incident. Rather, as in this case, respondent there "manifested a pattern of behavior which clerly disrepute." (89 Ill.2d 7, 13.) Further, the respondent here converted the funds of six clients, and therefore his conduct is arguably more severe than that involved in Feldman. Although mitigating circumstances were urged by the respondent in this case, there is no indication that they were considered by the court.

Similarly, in In re Smith (1979), 75 Ill.2d 134, the attorney was disbarred for the wrongful conversion of clients' funds. In that case, respondent received settlement or judgment checks to which his clients were entitled. He forged their endorsements on the checks, deposited them in his bank account, and converted the proceeds to his own use. Im imposing the sanction of disbarment, the court considered the fact that respondent was guilty of three independent acts of conversion. Although the court notes other aggravating circumstances, (misrepresentations to his clients, lack of candor, and no attempt at restitution), the attorney in the instant case also did more than commingle and convert funds. He avoided communication with his clients and, as noted by the Review Board, engaged in "loose, careless and dilatory practices." (See slip op. at 5). Further, as the majority indicates, respondent's explanations for his conduct are "completely unacceptable" (slip op. at 5), and consequently his candor is questionable.

In In re Stillo (1977), 68 Ill.2d 49, the attorney was charged with converting his client's funds, in that he settled her claim and failed to submit to her the proceeds of the settlement. He also borrowed $10,000 from another client which he failed to repay. On the basis of respondent's deceptive attitude before the Hearing Board, and these two instances of misconduct, only one of which involved conversion, this court ordered that the attorney be disbarred. Similarly, this court in In re Smith (1976), 63 Ill.2d 250, determined that disbarement was an appropriate sanction for an attorney who converted to his own use the proceeds of his client's settlement award. This discipline was imposed despite respondent's assertions of mitigating circumstances, and the fact that he extracted money from only one client.

In In re Frey (1976), 65 Ill.2d 130, an attorney was disbarred for commingling and converting his clients' funds, which conduct, as in this case, "extended over a considerable period of time." (65 Ill.2d 130, 131). The court further indicated that respondent falsely advised his clients with respect to the status of their claims.

Similarly, in the instant case, the attorney misrepresented to at least one client that he would receive his money in about two weeks. Two months later, the client still had not received the sum to which he was entitled. Further, two clients received checks from respondent which were subsequently returned for insufficient funds. As this court stated in In re Frey (1976) 65 Ill.2d 130, 131-32, the attorney's misconduct did not involve "merely negligent acts but are positive acts of misconduct which require disbarment."

Although these cases alone indicate that the disbarment of respondent is clearly warranted, there are numerous other cases to the same effect. (See e.g., In re Fumo (1972), 52 Ill.2d 307; In re Snitoff (1972), 53 Ill.2d 50; In re Lingle (1963), 27 Ill.2d 459; In re Patlak (1938), 368 Ill. 547.) As this court stated in In re Stillo (1977), 68 Ill.2d 49, 54: "When a lawyer *** converts a clients' funds to his own personal use he commits an act involving moral turpitude, and, in the absence of mitigating

circumstances, such conversion is a gross violation of the attorney's oath, calling for the attorney's disbarment." (In re Royal (1963), 29 Ill.2d 458, 464; In re Ahern (1962) 26 Ill.2d 104, 110.) Any mitigating factors urged in the instant case, as in In re Feldman, cannot possibly alleviate the attorney's repeated and grievous departures from his ethical and professional obligations.

In summary, based upon the above cases, I believe the appropriate sanction here is disbarment, rather than the suspension ordered by the majority. I reaffirm my view that although it is necessary to consider the facts and circumstances of each case, that proposition should not be used as an aegis to attenuate the always strived-for-goal of consistency.

State of Illinois)
) SS.
Supreme Court)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of January in the year of our Lord, one thousand nine hundred and eighty-two, within and for the State of Illinois.

PRESENT: HOWARD C. RYAN, CHIEF JUSTICE
JUSTICE ROBERT C. UNDERWOOD JUSTICE DANIEL P. WARD
JUSTICE JOSEPH H. GOLDENHERSH JUSTICE WILLIAM G. CLARK
JUSTICE THOMAS J. MORAN JUSTICE SEYMOUR SIMON
TYRONE C. FAHNER, ATTORNEY GENERAL

LOUIE F. DEAN, MARSHALL

ATTEST: ROBERT H. GILLESPY, CLERK

BE IT REMEMBERED, that to-wit: on the 19th day of February, A.D. 1982, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of recored, to-wit:

In re:)
) Disciplinary
No. 54243) Commission
) 78-CH-34
Arthur H. Grant,) 80-CH-17
)
an Attorney)

APPENDIX B

And now, on this day, the Court having duly considered the Report of the Review Board, and exceptions thereto, together with the briefs filed herein, and being fully advised of and concerning the premises;

IT IS HEREBY ORDERED that respondent, Arthur H. Grant, be suspended from the practice of law for a period of two years.

I, H. WAYNE RUSSELL, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 1st day of April A.D. 1982.

Clerk,
Supreme Court of the State of Illinois.

ILLINOIS SUPREME COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

Robert H. Gillespy
Clerk

March 25, 1982

Mr. William J. Harte
Attorney at Law
111 W. Washington St., S#2025
Chicago, Il 60602

No. 54243 - In re: Arthur H. Grant, an Attorney. Disciplinary Commission.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause,

Very truly yours,

Clerk of the Supreme Court

P.S. We are enclosing a corrected copy of page 3, 11 and 12 of the opinion forwarded to you on February 19, 1982.

APPENDIX C